

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICHAEL GILMORE,

Plaintiff,

v.

BOEING COMPANY,

Defendant.

CASE NO. C16-1617-JCC

STIPULATED PROTECTIVE
ORDER

This matter comes before the Court on the parties' stipulated proposed protective order (Dkt. No. 13). The Court hereby ORDERS the following:

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

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1 **2. “CONFIDENTIAL” MATERIAL**

2 “Confidential” material shall include the following documents and tangible things
3 produced or otherwise exchanged:

4 (a) Payroll records pertaining to any current or former employee of Defendant that
5 contains financial account information. Good cause exists to protect the privacy rights of
6 Defendant’s current and former employees who are not parties to this litigation. No
7 public interest is served by requiring public disclosure of an individual’s private and
8 personal financial information in a matter in which he or she is not a party.

9 (b) Medical and mental health records pertaining to the parties, or any non-party, to the
10 extent the information is discoverable. Good cause exists to protect highly sensitive and
11 private nature of all medical records from non-party access. No public interest is served
12 by making any medical records of Plaintiff or any non-party publicly available.

13 (c) Financial records of the parties, including tax records. Good cause exists to protect
14 private financial records from non-party access. No public interest is served by these
15 records being publicly available.

16 (d) Proprietary business information, information regarding corporate strategy, a trade
17 secret or other commercial or financial information that would result in competitive or
18 commercial harm in the marketplace if the material were disseminated to persons outside
19 The Boeing Company or reviewed by persons other than those specifically identified
20 herein for purposes of this litigation.

21 **3. SCOPE**

22 The protections conferred by this agreement cover not only Confidential Material (as
23 defined above), but also (1) any information copied or extracted from Confidential Material;
24 (2) all copies, excerpts, summaries, or compilations of Confidential Material; and (3) any
25 testimony, conversations, or presentations by parties or their counsel that might reveal
26 Confidential Material. However, the protections conferred by this agreement do not cover

1 information that is in the public domain or becomes part of the public domain through trial or
2 otherwise.

3 **4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL**

4 4.1 Basic Principles. A receiving party may use Confidential Material that is disclosed or
5 produced by another party or by a non-party in connection with this case only for prosecuting,
6 defending, or attempting to settle this litigation. Confidential Material may be disclosed only to
7 the categories of persons and under the conditions described in this agreement. Confidential
8 Material must be stored and maintained by a receiving party at a location and in a secure manner
9 that ensures that access is limited to the persons authorized under this agreement.

10 4.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by
11 the Court or permitted in writing by the designating party, a receiving party may disclose any
12 Confidential Material only to:

13 (a) the receiving party's counsel of record in this action, as well as employees of counsel
14 to whom it is reasonably necessary to disclose the information for this litigation;

15 (b) the officers, directors, and employees (including in-house counsel) of the receiving
16 party to whom disclosure is reasonably necessary for this litigation, unless the parties
17 agree that a particular document or material produced is for Attorney's Eyes Only and is
18 so designated;

19 (c) experts and consultants to whom disclosure is reasonably necessary for this litigation
20 and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

21 (d) the Court, court personnel, and court reporters and their staff;

22 (e) copy or imaging services retained by counsel to assist in the duplication of
23 Confidential Material, provided that counsel for the party retaining the copy or imaging
24 service instructs the service not to disclose any Confidential Material to third parties and
25 to immediately return all originals and copies of any Confidential Material;

26 (f) during their depositions, witnesses in the action to whom disclosure is reasonably

necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the designating party or ordered by the Court.

Pages of transcribed deposition testimony or exhibits to depositions that reveal Confidential Material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this agreement; and

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

4.3 Filing Confidential Material. Before filing Confidential Material or discussing or referencing such material in court filings, the filing party shall confer with the designating party to determine whether the designating party will remove the confidential designation, whether the document can be redacted, or whether a motion to seal or stipulation and proposed order is warranted. Local Civil Rule 5(g) sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the Court to file material under seal.

5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party or non-party that designates information or items for protection under this agreement must take care to limit any such designation to specific material that qualifies under the appropriate standards. The designating party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify, so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this agreement.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily encumber or delay the case development process or to impose unnecessary expenses and burdens on other parties) expose the designating party to sanctions.

1 If it comes to a designating party's attention that information or items that it designated
2 for protection do not qualify for protection, the designating party must promptly notify all other
3 parties that it is withdrawing the mistaken designation.

4 5.2 Manner and Timing of Designations. Except as otherwise provided in this agreement
5 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
6 disclosure or discovery material that qualifies for protection under this agreement must be clearly
7 so designated before or when the material is disclosed or produced.

8 (a) Information in documentary form: (e.g., paper or electronic documents and deposition
9 exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings),
10 the designating party must affix the work "CONFIDENTIAL" to each page that contains
11 Confidential Material. If only a portion or portions of the material on a page qualifies for
12 protection, the producing party also must clearly identify the protected portions(s) (e.g.,
13 by making appropriate markings in the margins).

14 (b) Testimony given in deposition or in other pretrial or trial proceedings: the parties
15 must identify on the record, during the deposition, hearing, or other proceeding, all
16 protected testimony, without prejudice to their right to so designate other testimony after
17 reviewing the transcript. Any party or non-party may, within 15 days after receiving a
18 deposition transcript, designate portions of the transcript, or exhibits thereto, as
19 confidential.

20 (c) Other tangible items: the producing party must affix in a prominent place on the
21 exterior of the container or containers in which the information or item is stored the work
22 "CONFIDENTIAL." If only a portion or portions of the information or item warrant
23 protection, the producing party, to the extent practicable, shall identify the protected
24 portions(s).

25 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
26 designate qualified information or items does not, standing alone, waive the designating party's

1 right to secure protection under this agreement for such material. Upon timely correction of a
2 designation, the receiving party must make reasonable efforts to ensure that the material is
3 treated in accordance with the provisions of this agreement.

4 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

5 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
6 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality
7 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
8 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
9 challenge a confidentiality designation by electing not to mount a challenge promptly after the
10 original designation is disclosed.

11 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
12 regarding confidential designations without court involvement. Any motion regarding
13 confidential designations or for a protective order must include a certification, in the motion or in
14 a declaration or affidavit, that the movant has engaged in a good faith meet and confer
15 conference with other affected parties in an effort to resolve the dispute without court action. The
16 certification must list the date, manner, and participants to the conference. A good faith effort to
17 confer requires a face-to-face meeting or a telephone conference.

18 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
19 intervention, the designating party may file and serve a motion to retain confidentiality under
20 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of
21 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those
22 made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on
23 other parties) may expose the challenging party to sanctions. All parties shall continue to
24 maintain the material in question as confidential until the Court rules on the challenge.

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1 **7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
2 **OTHER LITIGATION**

3 If a party is served with a subpoena or a court order issued in other litigation that compels
4 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that
5 party must:

6 (a) promptly notify the designating party in writing and include a copy of the subpoena or
7 court order;

8 (b) promptly notify in writing the party who caused the subpoena or order to issue in the
9 other litigation that some or all of the material covered by the subpoena or order is
10 subject to this agreement. Such notification shall include a copy of this agreement; and

11 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
12 designating party whose confidential material may be affected.

13 **8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

14 If a receiving party learns that, by inadvertence or otherwise, it has disclosed Confidential
15 Material to any person or in any circumstance not authorized under this agreement, the receiving
16 party must immediately (a) notify in writing the designating party of the unauthorized
17 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material,
18 (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of
19 this agreement, and (d) request that such person or persons execute the “Acknowledgement and
20 Agreement to Be Bound” that is attached hereto as Exhibit A.

21 **9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
22 **PROTECTED MATERIAL**

23 When a producing party gives notice to receiving parties that certain inadvertently
24 produced material is subject to a claim of privilege or other protection, the obligations of the
25 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
26 provision is not intended to modify whatever procedure may be established in an e-discovery

order or agreement that provides for production without prior privilege review. Parties shall confer on an appropriate non-waiver order under Fed. R. Evid. 502.

10. NON TERMINATION AND DESTRUCTION OF DOCUMENTS

Within 60 days after the termination of this action, including all appeals, each receiving party must destroy all confidential material to the producing party, including all copies, extracts and summaries thereof.

Notwithstanding this provision, counsel are entitled to retain one archival copy of all documents filed with the court, trial, deposition, and hearing transcripts, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain Confidential Material.

The confidentiality obligations imposed by this agreement shall remain in effect until a designating party agrees otherwise in writing or a court orders otherwise.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED this 20th day of January 2017.

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Pursuant to this stipulation, IT IS SO ORDERED.

DATED this 24th day of January 2017.

A handwritten signature in black ink, reading "John C. Coughenour", is written over a horizontal line.

John C. Coughenour
UNITED STATES DISTRICT JUDGE

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____, [print or type full name], of
_____ [print or type full address], declare under
penalty of perjury that I have read in its entirety and understand the Stipulated Protective
Order that was issued by the United States District Court for the Western District of Washington
on _____ in the case of *Michael Gilmore v. The Boeing Company*, No. 2:16-cv-
01617-JCC. I agree to comply with and to be bound by all the terms of this Stipulated Protective
Order and I understand and acknowledge that failure to so comply could expose me to sanction
and punishment in the nature of contempt. I solemnly promise that I will not disclose in any
manner any information or item that is subject to this Stipulated Protective Order to any person
or entity except in strict compliance with the provisions of this Order

I further agree to submit to the jurisdiction of the United States District Court for the
Western District of Washington for the purpose of enforcing the terms of this Stipulated
Protective Order, even if such enforcement proceedings occur after termination of this action

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____